

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

RODNEY E. GAINES,

Petitioner,

v.

JANET DOWLING,

Respondent.

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Case No. CIV-22-543-G

ORDER

On June 27, 2022, Petitioner Rodney E. Gaines, a state prisoner appearing pro se, filed this action, which has been liberally construed as seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254. *See* Pet. (Doc. No. 1). In accordance with 28 U.S.C. § 636(b)(1), the matter was referred to Magistrate Judge Gary M. Purcell for preliminary review.

On September 21, 2022, Judge Purcell issued a Supplemental Report and Recommendation (Doc. No. 10), in which he recommended the habeas petition be dismissed as untimely filed. In the Supplemental Report and Recommendation, Judge Purcell advised Petitioner of his right to object to the Supplemental Report and Recommendation by October 11, 2022. Judge Purcell also advised that a failure to timely object would constitute a waiver of the right to appellate review of the factual findings and legal conclusions contained in the Supplemental Report and Recommendation.

As of this date, Petitioner has not submitted an objection to the Supplemental Report and Recommendation or sought leave for additional time to do so.


CONCLUSION

Accordingly, the Supplemental Report and Recommendation (Doc. No. 10) is ADOPTED. The Petition for Writ of Habeas Corpus (Doc. No. 1) is DISMISSED. A separate judgment shall be entered.

Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts requires the Court to issue or deny a certificate of appealability when it enters a final order adverse to a petitioner. A certificate of appealability may issue only upon “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Further, “[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484.

Upon review, the Court concludes that the requisite standard is not met in this case. Thus, a certificate of appealability is DENIED.

IT IS SO ORDERED this 24th day of October, 2022.



CHARLES B. GOODWIN
United States District Judge